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ABSTRACT

This booklet contains the major mandates, from a variety of sources, used to assist school districts and their personnel in identifying the tasks required by law to fulfill the educational obligations related to equal educational opportunity. It covers specifically a summary of major court cases involving bilingual education; Title VI of the 1964 Civil Rights Act and its regulations;the May, 1970 Department of Health, Education, and Welfare (DHEW) Memorandum on discrimination against limited English speaking students; the Equal Educational Opportunity Act of 1974; the Bilingual Education Act of 1974; the August, 1975 DHEW "Lau Compliance" Memorandum; and the Education Language Rule adopted by the Washington State Human Rights Commission. (Author/HC)

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School Districts, Limited English-speaking Students, and the Law

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olympia, washington 98504

NO. 2 in the Bilingual Education Mini-booklet Series

UD017866

Introduction and Booklet Purpose

Numerous school districts throughout Washington are finding that students with limited English-speaking ability, either in small or large numbers, are attending their public schools. Considerable attention, in recent years, has been focused on these students. Within the last decade there have been judicial, executive, and legislative mandates articulating the responsibility of the school districts to provide special assistance for these students to ensure their access to equal educational opportunities. This booklet is a gathering of the major mandates from a variety of sources to assist school districts and their personnel in identifying specifically the tasks ahead, as required by law, in fulfillment of our educational obligations related to equal educational opportunity.

A. Barretto Ogilvie
State Bilingual Education Consultant

For State Assistance

State Assistance for bilingual/bicultural education program design and development may be obtained by contacting the following individuals at the:

Superintendent of Public Instruction
Old Capitol Building
Olympia, Washington 98504

Warren Burton, Director
Equal Educational Opportunities
(206)753-2560

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State Bilingual Education Coordinator
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A Legal Quiz

SOME PRELIMINARY LEGAL QUESTIONS IF YOUR SCHOOL DISTRICT HAS STUDENTS WHO SPEAK A PRIMARY OR HOME LANGUAGE OTHER THAN ENGLISH

	Yes	No	Don't Know
1. Is your school district providing special instructional programs for these students to facilitate their learning of English?	☐	☐	☐
2. Has your school district identified and located these students and assessed their language dominance and English proficiency?	☐	☐	☐
3. For the limited English-speaking students at the elementary grades, is part of their instruction in their native language?	☐	☐	☐
4. Is your school district communicating in the home language of the parent of the limited English-speaking students?	☐	☐	☐
5. Is your school district providing instructional content of the culture associated with the native language of these students?	☐	☐	☐
6. If your school district has 20 or more students of the same language group having a primary or home language other than English, does it have a program plan to provide special instructional assistance for them?	☐	☐	☐
7. Are any of these students placed in programs which are usually designed to teach students who are mentally retarded?	☐	☐	☐
8. Are any of these limited English-speaking students at the secondary level denied access to college prepatory courses because of their lack of English proficiency?	☐	☐	☐
9. Are the limited English-speaking students grouped together all day for facilitating teaching in a manner geared to their English proficiency level?	☐	☐	☐
10. Is English-as-a-second-language(ESL) the only language instructional program being implemented for limited English-speaking students in your school district?	☐	☐	☐

A Response Caution

If the answer is "NO" for any of the questions 1 through 6 or "Yes" for any of the questions 7 through ten, your school district may be in potential violation of federal and/or state law.

School district personnel should be familiar with the law as it applies to instructional services for limited English-speaking students. This booklet reviews and/or summarizes the major judicial, legislative, and executive mandates identifying the responsibilities of school districts in this regard.

SUMMARY OF SOME MAJOR COURT CASES INVOLVING BILINGUAL/BICULTURAL EDUCATION

Lau v. Nichols(U.S. Supreme Court); January, 1974

The landmark court decision which made it the "law of the land" that school districts have a responsibility to provide special educational programs for limited English-speaking ability students to ensure their access to equal educational opportunity. The San Francisco Unified School District with its 2856 Chinese-dominant speaking students was providing special instruction for only 1000 of these students. The School District was charged with denying equal educational opportunity to the 1856 Chinese-speaking student not being given special services. The Court, basing its decision on Title VI of the 1964 Civil Rights Act, declared, in its ruling, that "...**there is no equality of treatment merely by providing students with the same facilities. textbooks. teachers and curriculum: for students who do not understand English are effectively foreclosed from any meaningful education.**"

Serna v. Portales(U.S. Court of Appeals, 10th Circuit); May, 1974

At the time of the court action 27% of the Portales School District population was made up of Spanish-dominant speaking students. Basing their complaint on *Lau v. Nichols* , the plaintiffs charged the Portales School District with failing to meet the special educational needs of Spanish-speaking children. The Court declaring that the "**Evidence shows that the Portales School District failed to provide Spanish-speaking students with meaningful education**" then ordered the district to: (1) reassess and enlarge its bilingual programs directed to the special needs of Latino students; (2) expand its bilingual/bicultural programs to all the other schools in its district having Spanish-speaking students; (3) seek new funding sources to improve equality of education for Latino students; and, (4) increase recruiting efforts of bilingual/bicultural Latino teachers and/or obtain sufficient certification for Spanish-speaking teachers to allow them to teach in the district.

Aspira et. al. v. Board of Education, City of New York(Consent Decree); August, 1974

Filed on behalf of Puerto Rican students and other Hispanic-speaking children, the plaintiffs charged that the New York public schools were not providing special programs for these students. The consequences, the plaintiffs alleged, included inadequate learning, poor academic achievement, a high drop-out rate and negative consequences on their post-high school pursuits and on the community. The plaintiffs and the New York Schools agreed to a consent decree in which the New York Public Schools would provide the following:

- Intensive instruction in English (regular and as a second language)
- Instruction in subject areas in Spanish where need is apparent
- Reinforcement of the pupil's use of Spanish and reading comprehension in Spanish where a need is indicated
- additionally, but not at the expense of the above three elements, students spending maximum time with other children so as to avoid isolation and segregation from their peers

Denetclarence(New Mexico); 1974

This case represents the first court-ordered bilingual program for Indian students in the United States. The plaintiffs in this case were Navaho students who made up 90% of the school district population. The court in deciding the case looked to evidentiary data of test averages and achievement levels comparing the Indian students against the non-Indian students and the student population in general. Results showed that the Navaho Indian students scored lower and achieved less. The bases of the Court's decision to order a bilingual education program for these students included: (1) that an educational program should be based on the principle that a child should have pride in his/her cultural heritage; (2) the child should be taught in the language s/he knows best; and, (3) a bilingual/bicultural approach would improve the self-image of the child and facilitate learning.

SUBCHAPTER V.—FEDERALLY ASSISTED PROGRAMS

§ 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under Federally assisted programs on ground of race, color, or national origin

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Pub.L. 88–352, Title VI, § 601, July 2, 1964, 78 Stat. 252.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 88–352, see 1964 U.S.Code Cong. and Adm.News, p. 2355.

* * *

§ 2000d–1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

Pub.L. 88–352, Title VI, § 602, July 2, 1964, 78 Stat. 252.

Historical Note

Equal Opportunity in Federal Employment. Nondiscrimination in government employment and in employment by government contractors and subcontractors, see Ex.Ord.No.11246, Sept. 21, 1965, 30 F.R. 12319 and Ex.Ord.No.11478, Aug. 8, 1969, 34 F.R. 12985, set out as notes under section 2000e of this title.

Legislative History. For legislative history and purpose of Pub.L. 88-352, see 1964 U.S.Code Cong. and Adm.News, p. 2355.

B. Regulations, Title VI of the Civil Rights Act of 1964, 45 C.F.R. Part 80.1-80.3(a)(b)

PART 80—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

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APPENDIX A: Programs to which this Part applies.

AUTHORITY: The provisions of this Part 80 issued under sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1, unless otherwise noted.

SOURCE: The provisions of this Part 80 appear at 29 F.R. 16298, Dec. 4, 1964; 29 F.R. 16988, Dec. 11, 1964; 30 F.R. 35, Jan. 5, 1965, unless otherwise noted.

§ 80.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall; on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Health, Education, and Welfare.

§ 80.2 Application of this part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including the Federally-assisted programs and activities listed in Appendix A of this part. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of the regulation pursuant to an application approved prior to such effective date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this part, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 80.3. The fact that a program or activity is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

(Sec. 604, 78 Stat. 253; 42 U.S.C. 2000d–3) [29 F.R. 16298, Dec. 4, 1964, as amended at 32 F.R. 14556, Oct. 19, 1967]

§ 80.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

C. Interpretative Memorandum of HEW, May 25, 1970

ATTACHMENT 3

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

May 25, 1970

MEMORANDUM

TO : School Districts With More Than Five Percent National Origin-Minority Group Children

FROM : J. Stanley Pottinger
Director, Office for Civil Rights

SUBJECT : Identification of Discrimination and Denial of Services on the Basis of National Origin

Title VI of the Civil Rights Act of 1964, and the Departmental Regulation (45 CFR Part 80) promulgated thereunder, require that there be no discrimination on the basis of race, color or national origin in the operation of any federally assisted programs.

Title VI compliance reviews conducted in school districts with large Spanish-surnamed student populations by the Office for Civil Rights have revealed a number of common practices which have the effect of denying equality of educational opportunity to Spanish-surnamed pupils. Similar practices which have the effect of discrimination on the basis of national origin exist in other locations with respect to disadvantaged pupils from other national origin-minority groups, for example, Chinese or Portugese.

The purpose of this memorandum is to clarify D/HEW policy on issues concerning the responsibility of school districts to provide equal educational opportunity to national origin-minority group children deficient in English language skills. The following are some of the major areas of concern that relate to compliance with Title VI:

(1) Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

(2) School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills.

(3) Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

(4) School districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.

School districts should examine current practices which exist in their districts in order to assess compliance with the matters set forth in this memorandum. A school district which determines that compliance problems currently exist in that district should immediately communicate in writing with the Office for Civil Rights and indicate what steps are being taken to remedy the situation. Where compliance questions arise as to the sufficiency of programs designed to meet the language skill needs of national origin-minority group children already operating in a particular area, full information regarding such programs should be provided. In the area of special language assistance, the scope of the program and the process for identifying need and the extent to which the need is fulfilled should be set forth.

School districts which receive this memorandum will be contacted shortly regarding the availability of technical assistance and will be provided with any additional information that may be needed to assist districts in achieving compliance with the law and equal educational opportunity for all children. Effective as of this date the aforementioned areas of concern will be regarded by regional Office for Civil Rights personnel as a part of their compliance responsibilities.

E. Equal Educational Opportunity Act of 1974 (Excerpts), 20 U.S.C. Secs. 1703, 1706, 1708-10

PART 2—UNLAWFUL PRACTICES

§ 1703. Denial of equal educational opportunity prohibited

No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by—

(a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools;

(b) the failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps, consistent with part 4 of this chapter, to remove the vestiges of a dual school system;

(c) the assignment by an educational agency of a student to a school, other than the one closest to his or her place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, sex, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his or her place of residence within the school district of such agency providing the appropriate grade level and type of education for such student;

(d) discrimination by an educational agency on the basis of race, color, or national origin in the employment, employment conditions, or assignment to schools of its faculty or staff, except to fulfill the purposes of subsection (f) below;

(e) the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency; or

(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

Pub.L. 93-380, Title II, § 204, Aug. 21, 1974, 88 Stat. 515.

Effective Date. Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub.L. 93-380, set out as a note under section 241b of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-380, see 1974 U.S.Code Cong. and Adm.News, p. —.

§ 1706. Civil actions by individuals denied equal educational opportunities or by Attorney General

An individual denied an equal educational opportunity, as defined by this subchapter may institute a civil action in an appropriate district court of the United States against such parties, and for such relief, as may be appropriate. The Attorney General of the United States (hereinafter in this chapter referred to as the "Attorney General"), for or in the name of the United States, may also institute such a civil action on behalf of such an individual.

Pub.L. 93-380, Title II, § 207, Aug. 21, 1974, 88 Stat. 516.

Effective Date. Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub.L. 93-380, set out as a note under section 241b of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-380, see 1974 U.S.Code Cong. and Adm.News, p. —.

§ 1708. Jurisdiction of district courts

The appropriate district court of the United States shall have and exercise jurisdiction of proceedings instituted under section 1706 of this title.

Pub.L. 93-380, Title II, § 209, Aug. 21, 1974, 88 Stat. 516.

Effective Date. Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub.L. 93-380, set out as a note under section 241b of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-380, see 1974 U.S.Code Cong. and Adm.News, p. —.

§ 1709. Intervention by Attorney General

Whenever a civil action is instituted under section 1706 of this title by an individual, the Attorney General may intervene in such action upon timely application.

Pub.L. 93-380, Title II, § 210, Aug. 21, 1974, 88 Stat. 516.

Effective Date. Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub.L. 93-380, set out as a note under section 241b of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-380, see 1974 U.S.Code Cong. and Adm.News, p. —.

§ 1710. Civil actions by Attorney General; notice of violations; certification respecting undertaking appropriate remedial action

The Attorney General shall not institute a civil action under section 1706 of this title before he—

(a) gives to the appropriate educational agency notice of the condition or conditions which, in his judgment, constitute a violation of part 2 of this subchapter; and

(b) certifies to the appropriate district court of the United States that he is satisfied that such educational agency has not, within a reasonable time after such notice, undertaken appropriate remedial action.

Pub.L. 93-380, Title II, § 211, Aug. 21, 1974, 88 Stat. 516.

Effective Date. Section effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub.L. 93-380, set out as a note under section 241b of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-380, see 1974 U.S.Code Cong. and Adm.News, p. —.

F. Bilingual Education Act of 1974, 20 U.S.C. 880b *et seq.*

BILINGUAL EDUCATIONAL PROGRAMS

81 Stat. 816; 84 Stat. 151. 20 USC 880b.

SEC. 103. (a)(1) Title VII of the Elementary and Secondary Education Act of 1965 is amended to read as follows:

"TITLE VII—BILINGUAL EDUCATION

"SHORT TITLE

Bilingual Education Act. 20 USC 880b note.

"SEC. 701. This title may be cited as the 'Bilingual Education Act'.

"POLICY; APPROPRIATIONS

20 USC 880b.

"SEC. 702. (a) Recognizing—

"(1) that there are large numbers of children of limited English-speaking ability;

"(2) that many of such children have a cultural heritage which differs from that of English-speaking persons;

"(3) that a primary means by which a child learns is through the use of such child's language and cultural heritage;

"(4) that, therefore, large numbers of children of limited English-speaking ability have educational needs which can be met by the use of bilingual educational methods and techniques; and

"(5) that, in addition, children of limited English-speaking ability benefit through the fullest utilization of multiple language and cultural resources.

the Congress declares it to be the policy of the United States, in order to establish equal educational opportunity for all children (A) to encourage the establishment and operation, where appropriate, of educational programs using bilingual educational practices, techniques, and methods, and (B) for that purpose, to provide financial assistance to local educational agencies, and to State educational agencies for certain purposes, in order to enable such local educational agencies

to develop and carry out such programs in elementary and secondary schools, including activities at the preschool level, which are designed to meet the educational needs of such children; and to demonstrate effective ways of providing, for children of limited English-speaking ability, instruction designed to enable them, while using their native language, to achieve competence in the English language.

Appropriation.

"(b)(1) Except as is otherwise provided in this title, for the purpose of carrying out the provisions of this title, there are authorized to be appropriated $135,000,000 for the fiscal year ending June 30, 1974; $135,000,000 for the fiscal year ending June 30, 1975; $140,000,000 for the fiscal year ending June 30, 1976; $150,000,000 for the fiscal year ending June 30, 1977; and $160,000,000 for the fiscal year ending June 30, 1978.

"(2) There are further authorized to be appropriated to carry out the provisions of section 721(b)(3) $6,750,000 for the fiscal year ending June 30, 1974; $7,250,000 for the fiscal year ending June 30, 1975; $7,750,000 for the fiscal year ending June 30, 1976; $8,750,000 for the fiscal year ending June 30, 1977; and $9,750,000 for the fiscal year ending June 30, 1978.

Post, p. 537.

"(3) From the sums appropriated under paragraph (1) for any fiscal year—

"(A) the Commissioner shall reserve $16,000,000 of that part thereof which does not exceed $70,000,000 for training activities carried out under clause (3) of subsection (a) of section 721, and shall reserve for such activities 33⅓ per centum of that part thereof which is in excess of $70,000,000; and

"(B) the Commissioner shall reserve from the amount not reserved pursuant to clause (A) of this paragraph such amounts as may be necessary, but not in excess of 1 per centum thereof, for the purposes of section 732.

Post, p. 510.

"DEFINITIONS; REGULATIONS

20 USC 880b-1.

"SEC. 703. (a) The following definitions shall apply to the terms used in this title:

"(1) The term 'limited English-speaking ability', when used with reference to an individual, means—

"(A) individuals who were not born in the United States or whose native language is a language other than English, and

"(B) individuals who come from environments where a language other than English is dominant, as further defined by the Commissioner by regulations;

and, by reason thereof, have difficulty speaking and understanding instruction in the English language.

"(2) The term 'native language', when used with reference to an individual of limited English-speaking ability, means the language normally used by such individuals, or in the case of a child, the language normally used by the parents of the child.

"(3) The term 'low-income' when used with respect to a family means an annual income for such a family which does not exceed the low annual income determined pursuant to section 103 of title I of the Elementary and Secondary Education Act of 1965.

Ante, p. 488.

"(4)(A) The term 'program of bilingual education' means a program of instruction, designed for children of limited English-speaking ability in elementary or secondary schools, in which, with respect to the years of study to which such program is applicable—

"(i) there is instruction given in, and study of, English and, to the extent necessary to allow a child to progress effectively through

the educational system, the native language of the children of limited English-speaking ability, and such instruction is given with appreciation for the cultural heritage of such children, and, with respect to elementary school instruction, such instruction shall, to the extent necessary, be in all courses or subjects of study which will allow a child to progress effectively through the educational system; and

"(ii) the requirements in subparagraphs (B) through (E) of this paragraph and established pursuant to subsection (b) of this section are met.

English-speaking children, enrollment.

"(B) A program of bilingual education may make provision for the voluntary enrollment to a limited degree therein, on a regular basis, of children whose language is English, in order that they may acquire an understanding of the cultural heritage of the children of limited English-speaking ability for whom the particular program of bilingual education is designed. In determining eligibility to participate in such programs, priority shall be given to the children whose language is other than English. In no event shall the program be designed for the purpose of teaching a foreign language to English-speaking children.

"(C) In such courses or subjects of study as art, music, and physical education, a program of bilingual education shall make provision for the participation of children of limited English-speaking ability in regular classes.

"(D) Children enrolled in a program of bilingual education shall, if graded classes are used, be placed, to the extent practicable, in classes with children of approximately the same age and level of educational attainment. If children of significantly varying ages or levels of educational attainment are placed in the same class, the program of bilingual education shall seek to insure that each child is provided with instruction which is appropriate for his or her level of educational attainment.

Application.

"(E) An application for a program of bilingual education shall be developed in consultation with parents of children of limited English-speaking ability, teachers, and, where applicable, secondary school students, in the areas to be served, and assurances shall be given in the application that, after the application has been approved under this title, the applicant will provide for participation by a committee composed of, and selected by, such parents, and, in the case of secondary schools, representatives of secondary school students to be served.

Definitions.

"(5) The term 'Office' means the Office of Bilingual Education.

"(6) The term 'Director' means the Director of the Office of Bilingual Education.

"(7) The term 'Council' means the National Advisory Council on Bilingual Education.

Model programs.

"(b) The Commissioner, after receiving recommendations from State and local educational agencies and groups and organizations involved in bilingual education, shall establish, publish, and distribute, with respect to programs of bilingual education, suggested models with respect to pupil-teacher ratios, teacher qualifications, and other factors affecting the quality of instruction offered in such programs.

"(c) In prescribing regulations under this section, the Commissioner shall consult with State and local educational agencies, appropriate organizations representing parents and children of limited English-speaking ability, and appropriate groups and organizations representing teachers and educators involved in bilingual education.

"PART A—FINANCIAL ASSISTANCE FOR BILINGUAL EDUCATION PROGRAMS

"BILINGUAL EDUCATION PROGRAMS

Grants.
20 USC 880b-7.

"SEC. 721. (a) Funds available for grants under this part shall be used for—

"(1) the establishment, operation, and improvement of programs of bilingual education;

"(2) auxiliary and supplementary community and educational activities designed to facilitate and expand the implementation of programs described in clause (1), including such activities as (A) adult education programs related to the purposes of this title, particularly for parents of children participating in programs of bilingual education, and carried out, where appropriate, in coordination with programs assisted under the Adult Education Act, and (B) preschool programs preparatory and supplementary to bilingual education programs;

80 Stat. 1191; Post, p. 576.

"(3)(A) the establishment, operation, and improvement of training programs for personnel preparing to participate in, or personnel participating in, the conduct of programs of bilingual education and (B) auxiliary and supplementary training programs, which shall be included in each program of bilingual education, for personnel preparing to participate in, or personnel participating in, the conduct of such programs; and

20 USC 1201 note.

"(4) planning, and providing technical assistance for, and taking other steps leading to the development of, such programs.

Application.

"(b)(1) A grant may be made under this section only upon application therefor by one or more local educational agencies or by an institution of higher education, including a junior or community college, applying jointly with one or more local educational agencies (or, in the case of a training activity described in clause (3)(A) of subsection (a) of this section, by eligible applicants as defined in section 723). Post, p. 508. Each such application shall be made to the Commissioner at such time, in such manner, and containing such information as the Commissioner deems necessary, and

"(A) include a description of the activities set forth in one or more of the clauses of subsection (a) which the applicant desires to carry out; and

"(B) provide evidence that the activities so described will make substantial progress toward making programs of bilingual education available to the children having need thereof in the area served by the applicant.

Approval.

"(2) An application for a grant under this part may be approved only if—

"(A) the provision of assistance proposed in the application is consistent with criteria established by the Commissioner, after consultation with the State educational agency, for the purpose of achieving an equitable distribution of assistance under this part within the State in which the applicant is located, which criteria shall be developed by his taking into consideration (i) the geographic distribution of children of limited English-speaking ability, (ii) the relative need of persons in different geographic areas within the State for the kinds of services and activities described in subsection (a), (iii) with respect to grants

D. HEW Memorandum on "Evaluation of Voluntary Compliance Plans Designed to Eliminate Educational Practices Which Deny Non-English Language Dominant Students Equal Educational Opportunity," Summer, 1975

E. MAZZONE 9/12

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20201
AUG 11 1975

DEPARTMENT OF EDUCATION
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OFFICE OF BILINGUAL EDUCATION

MEMORANDUM FOR CHIEF STATE SCHOOL OFFICERS

FROM: Commissioner of Education, U. S. Office of Education

FROM: Acting Director, Office for Civil Rights

DEPARTMENT OF EDUCATION
RECEIVED
AUG 14 1975
OFFICE OF BILINGUAL EDUCATION

SUBJECT: Evaluation of Voluntary Compliance Plans Designed to Eliminate Educational Practices Which Deny Non-English Language Dominant Students Equal Educational Opportunity

In furtherance of regulations issued by this Department pursuant to Title VI of the Civil Rights Act of 1964, this Department, on May 25, 1970, issued a policy statement (subsequently published at 35 Federal Register 11595) stating in part that "Where inability to speak and understand the English language excludes national-origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to the students." (Attachment A).

On January 21, 1974 the United States Supreme Court in Lau v. Nichols (414 U.S. 563) expressly upheld the Department regulations (as interpreted by this policy statement) prohibiting educational practices by which "students who do not understand English are effectively foreclosed from any meaningful education." (Attachment B).

Earlier this year, our offices sent letters to several State Education Agencies requesting the assistance of these agencies in the conduct of compliance reviews of specific school districts within those states. State Education Agencies were specifically requested to assist the Department in the dissemination and evaluation of compliance reports.

In order to facilitate efforts by both State Education Agencies and this Office to secure voluntary compliance with current Title VI requirements in this regard, this Office designated a Task Force to develop an outline of those educational approaches which would constitute appropriate "affirmative steps" to be taken by a non-complying school district "to open its instructional program" to students foreclosed currently from effective participation therein. That outline has been developed and is formally called, "Task Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled Unlawful under Lau v. Nichols." (Attachment C).

This document separately discusses the types of educational approaches appropriate for elementary and secondary students and identifies approaches which are specifically geared to the differing language backgrounds and masteries of students.

School districts found to be in non-compliance with the aforementioned provisions of Title VI will be required to develop specific voluntary compliance plans to eliminate discriminatory educational practices (including the effects of past practices). Voluntary compliance plans which set forth educational strategies consistent with the approaches outlined in this document and which contain the other elements specified therein, will be accepted by this Office. School districts submitting voluntary compliance plans to this Office which are not consistent with the outlined approaches or with other required plan elements must demonstrate affirmatively, at the time of submission, that such plans, at a minimum, will be equally effective in ensuring equal educational opportunity.

In order to provide technical assistance to those school districts that wish to develop such voluntary compliance plans, the Office of Education has set up General Assistance Centers (Type B) commonly referred to as "Lau Centers." School districts wishing to obtain technical assistance to develop such plans should be advised to contact the Lau General Assistance Center which serves their geographical area (Attachment D).

If you have any questions concerning any of the matters discussed in this memorandum, please do not hesitate to contact your Regional Office for Civil Rights for further information.

Thank you for your continuing cooperation in this important area of mutual concern.

T. H. Bell
Commissioner of Education
U. S. Office of Education

Martin Gerry
Martin H. Gerry
Acting Director
Office for Civil Rights

Attachments

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

OFFICE FOR CIVIL RIGHTS

TASK FORCE FINDINGS SPECIFYING REMEDIES AVAILABLE FOR ELIMINATING PAST EDUCATIONAL PRACTICES RULED UNLAWFUL UNDER LAU v. NICHOLS

SUMMER 1975

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Copies of the Task Force Findings Specifying Remedies Available For Eliminating Past Education Practices Ruled Unlawful Under "Lau v. Nichols" are available from the Equal Educational Opportunities Section of the Superintendent of Public Instruction in Olympia.

washington h.r.c. ruling

Chapter 162-28
SCHOOLS AND EDUCATION

Education Language Rule Adopted by the Washington State Human Rights Commission on June 20, 1974.

WAC 162-28-030. Schools are places of public accommodation. (1) All schools and other educational facilities in the state of Washington, public or private, except those operated or maintained by a bona fide religious or sectarian institution, are "places of public resort, accommodation, assemblage or amusement" for purposes of the Washington state law against discrimination, Chapter 49.60 RCW. See the definition of the quoted term in RCW 49.60.040.

(2) This means that it is an unfair practice under RCW 49.60.215 for nonexempt schools or educational facilities or their agents or employees.

> "to commit any act which directly or indirectly results in any distinction, restriction or discrimination or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging . . . except for conditions and limitations established by law and applicable to all persons, regardless of race, creed, color, or national origin."

(3) This public accommodations section of the law against discrimination applies to schools in their relationship with students and potential students and their parents, and with members of the public who seek to use school facilities or who have an interest in how school facilities are used. Other sections of the law against discrimination govern schools in their relationship to employees (e.g. RCW 49.60.180), to those with whom schools have real estate transactions (e.g. RCW 49.60.222), and to others. RCW 49.60.080 declares a general civil right to be free from discrimination because of race, creed, color, national origin, sex, or the presence of any sensory, mental or physical handicap. Public schools are governed by Article IX, § 1 (equal education) and Article XXXI (Amendment 61) (equal rights) of the Washington Constitution and various federal and state statutes on equal treatment of the races and sexes, in addition to the law against discrimination.

WAC 162-28-040. Equal Educational opportunity for Children who are limited in English language skills because of national origin. (1) It is an unfair practice under RCW 49.60.215 for a school or educational institution covered by that section to fail or refuse to provide equal educational opportunity to children who are deficient in English language skills because of their national origin. Schools attended by such children shall meet the following standards:

(a) Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

(b) The affirmative steps taken under part (a) shall build competency in the English language without detriment to the children's skills in other languages, and without impairing or suppressing the children's cultural identity and heritage. The steps may include bilingual-bicultural education. The appropriateness of particular action will depend in part on whether the school or educational institution has many children or only a few children who require the steps. Nothing in this section is intended to preclude inclusion in the program of children who are deficient in the English language for reasons other than their national origin where that is compatible with the purposes of this section.

(c) School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills.

(d) Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational deadend or permanent track.

(e) School districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.

(2) This section is intended to be consistent with the requirements of §601 the United States Civil Rights Act of 1964, 42 USC § 2000d, and the regulations of the United States Department of Health, Education and Welfare, 45 CFR Part 80, and HEW guidelines to selected school districts dated 10 July 1970, 35 Fed. Reg. 11595, as interpreted in *Lau v. Nichols*, U.S. , 39 L.ed 2d 1, 94 S. Ct. , *(1974)*. Parts (a), (c), (d), and (e) of paragraph (1) are taken verbatim from the 10 July 1970 HEW guideline.

-REFERENCES-

Bilingual-Bicultural Education: A Handbook for Attorneys and Community Workers; Center for Law and Education(Cambridge, Mass., December, 1975)

KEDS Newsletter; Kent State Center for Education Development and Strategic Services, Vol. 2, No. 4, June, 1975

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